

QUINNIPIAC UNIVERSITY

SCHOOL OF LAW

Legal Clinics

**Testimony in Support of S.B. No. 453:
An Act Concerning Certificates of Relief from Barriers Resulting from
Convictions of a Crime**

Civil Justice Clinic, Quinnipiac University School of Law

Judiciary Committee
March 23, 2012

Dear Senator Coleman, Representative Fox, and distinguished members of the Judiciary Committee:

My name is David Norman, and I am a second-year law student at Quinnipiac University School of Law in Hamden. I am also a student in the Law School's Civil Justice Clinic, and I testify today on behalf of the Clinic. **We strongly support S.B. No. 453: An Act Concerning Certificates of Relief from Barriers Resulting from Convictions of a Crime.** This bill will help individuals with criminal records reenter society by clarifying policies and expediting administrative processes. Removing barriers to reentry in a more timely and efficient manner will help to reduce recidivism, lower crime, ensure public safety, and improve our economy.

In 2006, the Legislature created the provisional pardon program, which provides a mechanism for removing barriers and forfeitures imposed on individuals with criminal convictions. This program does not erase criminal records but was intended to remove barriers to licenses and employment for former offenders. However, the program is not as effective as it might be. Relatively few provisional pardons are issued each year.¹ Furthermore, employers and the general public often do not understand the legal effect of provisional pardons, leaving doubts as to their usefulness.

This bill, which is the well-considered and thoroughly deliberated recommendation of the Connecticut Sentencing Commission, would make a number of enhancements to the provisional pardon program, including renaming provisional pardons "Certificates of Relief from Barriers" (CRBs) to better describe their purpose and legal effect. Below, we describe our perspective on issues of collateral consequences, and our support for the provisions in the bill.

¹ In 2009 and 2010, fewer than 70 provisional pardons were issued each year. See Pardons Counts, CT Board of Pardons and Parole, <http://www.ct.gov/doc/lib/doc/PDF/PDFReport/PardonsCounts.pdf>.

² *Addressing the Issues Faced by the Formerly Incarcerated as They Re-enter the Community*, NEW YORK CITY

I. The Civil Justice Clinic's Perspective on Issues of Collateral Consequences

In the Civil Justice Clinic, we assist clients who face barriers to reintegration into society because of their criminal records. Many of the Clinic's clients are individuals with criminal records who are attempting to become licensed or employed, attain affordable housing, or otherwise contribute to society. We regularly represent clients denied public housing and occupational licenses based on their prior criminal convictions, and help people apply for pardons. We see first-hand that individuals with criminal convictions – even those people who have demonstrated extensive rehabilitation – often face barriers to successful reintegration. Our clients are often unable to gain employment and housing due to their status as former offenders.

This bill has the potential to assist individuals in reentry. This bill is not a panacea, but it does provide assistance to qualified people and should help to improve the economy and reduce recidivism. By providing more timely and efficient relief, deserving persons with a criminal conviction will be better able to stay employed and licensed, attain affordable housing, and contribute to society.

II. The Benefits of Involving Courts in Relieving Collateral Consequences

Significantly, this bill allows judges in less serious cases to grant Certificates of Relief from Barriers at the time of sentencing or during an offender's probation period. The court would be authorized to issue a Certificate to a person who was not sentenced to immediate incarceration, or who was sentenced to incarceration of less than two years. The court would apply the same standard already used by the Board of Pardons and Paroles ("BOPP") to grant provisional pardons under current law and could request probation to conduct an investigation and submit a report, if necessary.

By allowing courts to issue Certificates in limited circumstances, relief from barriers may be granted to qualified individuals when they are most in need of assistance. Relief from collateral consequences is a time-sensitive issue. Former offenders are often most in need of relief from barriers soon after sentencing or release from prison. In fact, recidivism statistics reveal that the majority of people rearrested are unemployed at the time of arrest.² By encouraging employment, this mechanism for timely and effective relief from collateral consequences would aid our economy and reduce recidivism. Granting judges this authority (but certainly *not* requiring judges to do so under any circumstances), will expedite the process of relief for deserving individuals.

In many cases, the circumstances surrounding the offense and the offender's criminal history will indicate to the judge that issuance of relief is inappropriate. In some cases, however, it will be clear at the time of sentencing that an individual should not be barred from returning to work or keeping a license as a result of the conviction. This decision can be determined based on information already available to the court and probation. In all cases, the judge retains full discretion; this bill does not require any court to grant relief to any person.

² *Addressing the Issues Faced by the Formerly Incarcerated as They Re-enter the Community*, NEW YORK CITY REENTRY ROUNDTABLE (2007), available at www.reentry.net/library/attachment.103023.

This process of granting courts the authority to issue Certificates is efficient and promotes judicial and administrative economy. Where it is plainly apparent at the time of sentencing that an individual should not be prevented from returning to work or keeping a license, it is considerably more efficient for the court to simply issue a Certificate at the time, rather than require the person to apply to the BOPP. The BOPP, an autonomous state agency, is an entirely separate entity that will usually lack any prior knowledge of the person. When it receives an application, the BOPP conducts an investigation, requiring substantial resources and time. This contributes to the lengthy processing time for deciding applications. Indeed, while the individual waits for a Certificate to issue, the person may be losing potential job opportunities. Because the court and probation already have knowledge of the person's history and the circumstances of the offense, the court is well-situated to determine suitability for a certificate.

At least two states – New York and Illinois – already give judges the power to grant relief at sentencing from some of the collateral consequences of convictions under certain circumstances. In those states, offenders may apply for state-issued certificates from the original sentencing court.³

Additionally, the major model and uniform acts contemplate a role for courts in removing certain collateral consequences.

- The **Model Penal Code** grants judges the authority, after an offender has fully satisfied his or her sentence, to grant an order declaring that the conviction shall not constitute a conviction for the purposes of collateral consequences provided by law, provided the individual is not convicted of another crime.
- The **ABA Criminal Justice Standards on Collateral Sanctions and Discretionary Disqualifications** ("ABA Standards"), the official recommendations of the American Bar Association, propose that a mechanism be implemented for timely and effective relief as early as sentencing from any burdensome and unreasonable collateral consequences.
- The **Uniform Collateral Consequences of Conviction Act** ("UCCCA"), the recommended model act drafted by the Uniform Law Commission,⁴ allows offenders to obtain relief from a particular collateral consequence. Such limited relief may be obtained before sentencing onward.

III. Other Benefits of the Bill

In addition to the improvements described above, the bill makes other helpful reforms. For example, the bill allows both the pardons panels and parole release panels of the BOPP to issue Certificates. Thus, parole release panels may consider granting a Certificate when an

³ See Margaret Love & April Frazier, *Certificates of Rehabilitation and Other Forms of Relief from the Collateral Consequences of Conviction: A Survey of State Laws*, ABA COMM'N ON EFFECTIVE CRIM. SANCTIONS, Sept. 19, 2006, at 2.

⁴ The Uniform Law Commission (formally known as the National Conference of Commissioners on Uniform State Laws) was created to determine areas where uniformity of state law is desirable and to draft uniform and model acts for consideration by the states. They are best-known for contributions like the Uniform Commercial Code.

individual is released on parole so as to facilitate successful reentry. This change will provide maximum flexibility to the BOPP, and the agency will retain full discretion over which panels to utilize for granting Certificates. The bill also provides greater guidance to licensing agencies and public employers in their consideration of applicants with Certificates. Finally, because access to public housing is a major challenge for individuals with criminal convictions, the bill allows Certificates to be issued to remove barriers to public housing.

This bill, which represents the well-reasoned recommendations of the Sentencing Commission, is worthy of serious consideration and support. Certificates of Relief from Barriers will help to reduce recidivism, increase employment and opportunities for deserving individuals who have a criminal record, and ensure public safety.

Thank you for the opportunity to testify.

Respectfully Submitted,

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